



Montoya, Darlene <dmontoya@nmag.gov>

RE: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

4 messages

Montoya, Darlene <dmontoya@nmag.gov>
To: Louis.Burkhard@co.valencia.nm.us

Tue, Jan 17, 2017 at 4:14 PM

Chief Burkhard:

Attached please find correspondence from the Law Enforcement Academy Board Subcommittee regarding the above-referenced matter. Please forward via email the requested information. If you have any questions or concerns, please do not hesitate to contact me at my direct line below.

Thank you and have a good day. Stay safe.

—— Forwarded message ——

From: <SFXerox@nmag.gov>
Date: Tue, Jan 17, 2017 at 3:23 PM
Subject: Scanned from a Xerox Multifunction Printer
To: "Montoya, Darlene" <dmontoya@nmag.gov>

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location:
Device Name: XRX9C934E5F4EC2

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

—
Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
[\(505\) 490-4854](tel:5054904854)



Scanned from a Xerox Multifunction Printer.pdf
70K

Jeff Noah <Jeff.Noah@co.valencia.nm.us>
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Fri, Jan 20, 2017 at 8:52 AM

Mrs. Montoya,

Attached is the use of force policy for the Valencia County Sheriff's Office for use of force and OIS.

Our policy was revised in July 2016. As the Sheriff's Office and accredited through the New Mexico Law Enforcement Professional Standards Council we are required to review our policy every year.

If there is anything else you need from Sheriff Burkhard for the Sheriff's Office please contact me and I will help you out.

Thank you,

Lieutenant Jeff Noah

Professional Standards

Valencia County Sheriff's Office

543 Luna Ave.

P.O. Box 1585

Los Lunas, NM 87031

[\(505\)866-2413](tel:(505)866-2413)

From: Mark Shea

Sent: Thursday, January 19, 2017 3:29 PM

To: Jeff Noah

Cc: Louis Burkhard

Subject: FW: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

Lt. Noah,

Please respond to the attached request on behalf of Sheriff Burkhard.

Undersheriff Mark R. Shea

Valencia County Sheriff's Office

P.O. Box 1585

Los Lunas, NM 87031

Office: (505) 866-2404 (Direct)

Cell: (505) 366-9049

Fax: (505) 866-2027

Email: Mark.Shea@co.valencia.nm.us

Website: <http://www.co.valencia.nm.us/232/county-sheriff>

From: Louis Burkhard

Sent: Wednesday, January 18, 2017 8:29 PM

To: Mark Shea <Mark.Shea@co.valencia.nm.us>

Subject: Fwd: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

Sent from my iPhone

Begin forwarded message:

From: "Montoya, Darlene" <dmontoya@nmag.gov>

Date: January 17, 2017 at 4:14:49 PM MST

To: <Louis.Burkhard@co.valencia.nm.us>

Subject: RE: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

[Quoted text hidden]



VCSO Use of force update 7-8-16.docx

40K

Montoya, Darlene <dmontoya@nmag.gov>

Tue, Jan 24, 2017 at 2:26 PM

To: Jeff Noah <Jeff.Noah@co.valencia.nm.us>

Thank you so much Lieutenant Noah. We have everything we need. Sorry I did not get back sooner. I just realized I hadn't printed these out.

Have a great rest of the day and stay safe.

[Quoted text hidden]

Montoya, Darlene <dmontoya@nmag.gov>

Tue, Jan 24, 2017 at 2:27 PM

To: Jeff.Noah@co.valencia.nm.us

Your message

To: Montoya, Darlene

Subject: FW: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force

Incidents

Sent: 1/20/17, 8:52:37 AM MST

was read on 1/24/17, 2:27:08 PM MST

SUBJECT: Use of Force	NUMBER: 2-2.02
EFFECTIVE DATE: 7-8-2016	REVIEW DATE:
NMMLEPSC STANDARDS: ADM.05.01, ADM.05.02, ADM.05.03, ADM.05.04	APPROVED: Sheriff

I. POLICY

The Valencia County Sheriff's Office will establish guidelines governing the use of force and its limitations, and to describe prohibitive activities. All deputies will be trained on the department's use of force policy and issued copies on the policy before being authorized to carry a firearm.[JN1]

II. DEFINITIONS

A. Deadly Force:

1. The firing of a firearm, even though no intent exists to kill or inflict serious physical injury.
2. Any force applied in any manner by any means that could reasonably be expected to cause death or serious physical injury.

B. Less-Lethal Force:

Any use of force other than that which is considered deadly force.

C. Firearms:

Any weapon from which a projectile is forcibly ejected by an explosive.

D. Reasonable belief:

When facts or circumstances the deputy knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

E. Serious Physical Injury:

A physical injury, which creates a substantial, risk of death, or which causes death or serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

F. Excessive Force:

1. Force is excessive when its application is inappropriate to the circumstances, resulting in injury to a suspect. In determining whether force has been excessively applied, the primary concern is whether the on-scene deputy reasonably believes that its application was necessary and appropriate. Based on the objective reasonableness standard, excessive force may be determined based on:
 - a) the severity of the crime;
 - b) the nature and extent of the threat posed by the suspect;
 - c) the degree to which the suspect resists arrest or detention; and
 - d) any attempts by the suspect to evade arrest by flight.
2. In evaluating the reasonable application of force, deputies must consider their own age, size, strength, skill level with department weapons, state of health, and the number of deputies opposing the number of suspects.

III. RULES AND PROCEDURES

- A. Deputies shall only use the force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the deputy and others. The use of force must be objectively reasonable. Deputies must use only the force which a reasonably prudent deputy would use in the same or similar circumstances.
- B. Deputies confronted often with situations requiring the use of force to affect an arrest or ensure public safety. The degree of force used depends on what the deputy perceives as reasonable and necessary under the circumstances at the time he or she decides to use force. Except for deadly force, the application of any degree of force is justified only when the deputy reasonably believes that it is necessary;
 1. To prevent the escape from custody, make an arrest or an investigative detention of a person the deputy believes has committed a crime; or
 2. To defend himself or herself or another from what the deputy believes is the use of force while trying to arrest another, prevent his or her escape, or otherwise lawfully take the person into custody.
- C. Facts or circumstances unknown to the deputy shall not be considered in later determining whether the force was justified. The department expects deputies to observe the following three guidelines in all applications of force:
 1. Employ the minimum force reasonably necessary to accomplish a legal objective.[JN2]
 2. Deputies may resort to more severe methods of force to overcome either increasing resistance or an increasingly dangerous threat to public safety.
 3. When a confrontation escalates suddenly, deputies may use any means or device at hand for self-defense provided that the use of force is reasonable.

- D. When applying deadly force, the deputy's objective shall be to use the amount of force necessary to stop the aggression or threat of aggression. The objective of the use of any force is to overcome the suspect's resistance to a deputy's lawful purpose. Deputies shall avoid unnecessary or excessive applications of force.
- E. Deputies shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy.

IV. LESS-LETHAL FORCE:

Most instances in which force is applied are non-deadly. Deputies shall assess the incident to determine which technique will best bring the situation under control. **Following the application of any use of force equal to or greater than compliance techniques, once the situation is contained, deputies shall provide or arrange to provide medical help.**

A. Verbal Control

Verbal control refers to the manner in which the deputy speaks to a person, which alone can manage a situation. Verbal control includes advice, persuasion, admonitions, or orders. The volume and tone of the deputy's speech may also contribute to control without having to resort to another method of force. The department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

B. Compliance Techniques

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, control holds, or come-alongs with sufficient force to make the lawful arrest without aggravating a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to deputies, bystanders, or the person being placed in custody.

C. Chemical Agents

The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective. The only chemical weapon authorized for patrol personnel is oleoresin capsicum (OC) or "pepper spray." Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect within training standards. Specialized chemical agents such as concussion grenades or tear gas shall be used only by personnel trained in their application, and then only under direct orders of the on-scene supervisor upon consultation with the Sheriff.

1. Use of chemical spray

- a) Chemical sprays shall not be used to threaten, to elicit information, or persuade people to comply with orders, nor will they be used on people who are handcuffed, secured, and properly in custody.
- b) Keep the application to the absolute minimum required to effectively control the subject.
- c) Chemical spray is target specific and should result in the deputy's ability to gain control of the suspect.
- d) The target area will consist of the face.

D. Baton

The department authorizes the carrying and use of the baton as the only striking weapon for deputies. All other forms of striking or punching weapons are prohibited for carrying or use, including but not limited to saps, blackjacks, slapjacks, nunchaku and similar sticks, and brass knuckles. Deputies who carry the baton shall be certified in its use. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or inappropriate and lesser levels are inappropriate or ineffective.

- 1. The baton shall not be used to strike handcuffed individuals.
- 2. The baton is mainly useful as an instrument to manage various control holds, not as a club or prod. Deputies shall not raise the baton above the head to strike a blow.

E. Electronic Control Device (ECD) commonly referred to as Taser

- 1. If practical, a warning should be given to a person prior to deploying the ECD to inform other personnel involved that a less-lethal weapon is being deployed.
- 2. The use of an ECD is authorized at the discretion of the deputy where actions of a suspect places the suspect, citizen, and/or deputies at risk of injury and/or where physical contact with the suspect would increase the likelihood of injury to the suspect, citizen, or deputies.
- 3. The use of the ECD is a highly effective option to control a situation. However, no deputy should place him/herself in unnecessary danger. When practical, the ECD should be used with lethal cover from another deputy.
- 4. Due to elevated risk factors for injury, special consideration should be given to the use of an ECD on:
 - a) Obviously pregnant females.
 - b) Persons with apparent debilitation illnesses or the elderly.
 - c) Children or persons under eighty (80) pounds.
 - d) On a handcuffed person(s) unless they are actively resisting, exhibiting active aggression, or attempting to harm themselves or others.

F. 12-Gauge Bean-Bag

1. Bean-bags are considered to extended range impact weapons that allow deputies to deliver a similar amount of force as a baton.
2. When possible, the bean-bag operator should consult with a supervisor prior to the use.
3. The bean-bag should not be pointed at any individual unless the deputy involved reasonably believes it will be necessary to use the device.
4. In less-lethal force situations, when possible, deputies should avoid using the bean-bag on:
 - a) Persons in wheel chairs or in control of a vehicle;
 - b) Obviously pregnant women;
 - c) People with known heart problems;
 - d) People with known debilitating illness or the elderly;
 - e) Children or those under 80 pounds;
 - f) Individuals with known neuromuscular disorders such as muscular sclerosis, muscular dystrophy.

V. **DEADLY FORCE**

A. Firearms - General

Firearms may be used:

1. In defense of the deputy or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or^[JN3]
2. To prevent the escape of a fleeing felon whom the deputy has probable cause to believe will pose a significant threat to human life should escape occur. In such case no other reasonable means of escape which does not endanger the deputy's life or the life of another person must be known to the deputy.^[JN4]
3. In evaluating a "significant threat," the deputy must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the deputy or others if apprehension is delayed.
4. Where feasible, deputies shall identify themselves and give a VERBAL warning before shooting.

5. Deputies may utilize deadly force to safely destroy an animal that represents a threat to public safety or as a humanitarian measure where the animal is seriously injured and other alternatives have been exhausted. A supervisor's approval should be sought when possible.
6. In routine firearm training or practice at an approved range.

VI. LIMITATIONS ON FORCE

A. The following acts associated with the use of force are prohibited.

1. Firing a warning shot.^[JN5]
2. Firing into crowds.
3. Firing at or from a moving vehicle, except where the deputy reasonably believes:
 - a) an occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; or
 - b) a vehicle is operated in a manner deliberately intended to strike a deputy or a citizen and all other reasonable means of defense have been exhausted (or are not present), including moving out of the path of the vehicle, and the safety of innocent persons would not be unduly jeopardized by the deputy's action.
 - c) Deputies shall not fire at or in the direction of a vehicle that no longer poses an immediate threat.
4. Firing into a building or through doors when the person fired at is not clearly visible unless deputies are being fired upon from such building or through such door.
5. Firing at a suspect when lesser force could be used and the deputy believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force, or when there is any substantial danger to innocent bystanders.
6. Application of choke hold or carotid control holds, except when the deputy reasonably believes such holds are the only means of protecting him/herself or another person from an imminent threat of serious physical injury or death.
7. Use of any flashlight as batons. A deputy may use a flashlight or other object designed for a use other than as a weapon **only** to defend himself/herself or another from imminent serious physical injury or death and then **only** if departmentally sanctioned methods are not available or are impractical.
8. Carrying or use of a second back-up firearm unless authorized by the Sheriff.

9. Use of deadly force against unarmed, non-dangerous fleeing felons, fleeing misdemeanants, or traffic offenders.
10. Any use of force not reasonably necessary in the light of the circumstances confronting the deputy.
11. Any forcible enforcement action when off duty except in circumstances which seriously threatens life or public order.

VII. REPORTING USE OF FORCE

1. Deputies shall document any application of force except for those arising in training or departmental demonstrations in an incident report.
2. If deputies have employed the use of a compliance technique resulting in any injury or any higher degree of force, they shall:
 - a) Immediately notify the on-duty supervisor, who will notify the chain of command of any use of physical force. If a deputy is unable to write the report, the Sergeant or supervisor will ensure the necessary reports are properly prepared and forwarded.
 - b) Submit an offense/incident report before the end of the shift describing the incident and any medical aid rendered, and shall document the force used.
 - c) Supervisors will ensure all reports/supplements are completed by all personnel involved. Supervisors will complete the department's use of force report form VCSO112 and forward it through the chain of command to the Sheriff. [JN6]
3. Any use of force on an animal does not require a use of force report; however an incident report will be generated documenting the circumstances of the use of force deployment. A printed copy of the incident report involving the use of force on an animal will be submitted to the professional standards office through the field services Lieutenant. The professional standards office will submit a copy of the report to the Sheriff and will maintain the incident report for two years.
4. When a Deputy is involved in a deadly force incident and an outside agency is investigating the incident a use of force report will be initiated for tracking purposes, but not completed. When the outside agency has completed the criminal investigation the Sheriff will review the investigation to determine what action, if any, the department will take.

VIII. DEPARTMENTAL RESPONSE

1. Pending administrative review, any deputy whose actions or application of force results in serious physical injury or death of another person shall be removed from line-duty assignment for a minimum of three days. This action protects both the deputy's and the community's interests until the situation are resolved. [JN7]

2. The Sheriff shall review all reported uses of force to determine whether:
 - a) Departmental orders were violated;
 - b) Relevant departmental policy was clearly understandable and effective to cover the situation; and
 - c) Departmental training was adequate.
3. The Sheriff may direct an internal investigation to examine an incident in which force was applied. The internal investigation may also examine training and policy needs.

IX. INTERNAL INVESTIGATIONS

Internal investigations of serious applications of force (usually of compliance techniques and more severe methods) shall be of two types conducted simultaneously; first, an administrative investigation to determine whether department standards were followed; second, a criminal one to detect law breaking. A criminal investigation shall be discontinued whenever the department is satisfied that no misconduct occurred.

X. PSYCHOLOGICAL SERVICES

Following a shooting resulting in injury or death, the deputy shall not return to duty until a psychological evaluation has been conducted, and the deputy has received counseling.